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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,039	02/20/2002	Jack J. Richards	4244P2431	9546

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4204 NORTH BROWN AVENUE
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,039

Applicant(s)

RICHARDS, JACK J.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 19-26 and 29-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-9, 19-26, 29, 32, and 33 is/are rejected.
- 7) ☒ Claim(s) 30 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's Amendment After Final filed March 1, 2005, has been entered. Claims 1, 8, and 19-22 have been amended. New claims 32 and 33 have been added, while claims 10-18, 27, and 28 are cancelled. Thus, the pending claims are 1-9, 19-26, and 29-33.
2. In view of applicant's amendment, prosecution is hereby reopened. Specifically, upon further consideration, the indicated allowability of claims 23-26 and 29 are withdrawn. New rejections are set forth below.
3. Said amendment renders moot the rejections of claims 10-18, 27, and 28, as set forth in sections 4, 5, and 7 of the last Office Action. Additionally, the amendment to claim 1, wherein the allowable subject matter of claim 10 is incorporated therein is sufficient to withdraw the rejections set forth in sections 6 and 8 of the last Office Action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-9 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 1 is drawn to a drapery lining. However, the recent amendment to claim 1 includes a drapery fabric coupled to the blackout and thermal drapery lining provided by the

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metallized film and acrylic latex layers. Thus, it is unclear if applicant intends to claim the drapery lining or the actual drape. It is suggested that applicant delete the word lining from the preamble of claims 1 and 3-9 in order to overcome said rejection. Claim 26 is similarly rejected since the method is drawn to making a drapery lining but the limitation of claim 26 produces a drapery itself.

7. Claim 2 limits the first side of said first layer of acrylic latex to being flocked. However, said recent amendment couples a drapery fabric to said first side of said first layer of acrylic latex. Thus, it is unclear how said side can be flocked when a fabric is already present. It is suggested applicant cancel claim 2 to overcome the rejection.

Allowable Subject Matter

8. Claims 1 and 3-9 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. Since applicant amended claim 1 to include the allowable subject matter of claim 10, claim 1 and the dependent claims, 3-9, contain allowable subject matter.

9. Claim 26 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Specifically, while the prior art teaches a metallized film sandwiched between two acrylic layers and a method of making the same (note Miller in view of DeMott and Leaderman), said prior art does not teach or suggest the addition of a drapery fabric coupled to the first side of the

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first layer of acrylic latex. One would not be properly motivated to apply said drapery fabric to the windshield cover disclosed by Miller.

Double Patenting

11. Claim 30 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. Additionally, claim 31 is objected as being a substantial duplicate of claim 26. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). It is suggested applicant cancel the duplicate claims.

Claim Rejections - 35 USC § 103

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,790,591 issued to Miller in view of US 5,902,753 issued to DeMott et al. and US 5,741,582 issued to Leaderman et al.

In the Final Rejection mailed December 1, 2004, it was stated that the prior amendment was sufficient to overcome the 103 rejection of claim 23 based upon Miller since the claimed method step of providing a blackout and thermal drapery lining was not obvious over Miller's teaching of providing an automobile windshield. Unfortunately, this statement was in error. Specifically, said step of "providing" should not be given patentable weight since it is not an

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active method step but rather merely descriptive of the intended use of the product produced. As such, the rejection of claim 23 is reinstated.

Claim 23 is drawn to a method of making a blackout and thermal drapery comprising (a) providing a film, (b) metallizing both sides of said film, (c) coating a first layer of acrylic latex to one side of the metallized film, and (d) coating a second layer of acrylic latex onto the other side of said metallized film.

Miller discloses a light and heat shielding windshield cover comprising a flexible, light-impervious, metallized plastic film (col. 1, lines 7-12 and col. 2, lines 52-66). The thickness of the metallized film ranges from 12-15 microns (0.012-0.015 mm) (col. 5, lines 26-31). Said metallized film may be made from a polypropylene film (col. 5, lines 31-35). Additionally, the metallized film may be coated on one or both sides with a polymeric coating, such as polyethylene, polyester, polycarbonate, or nylon, in order to protect said metal from abrasion and wear (col. 5, lines 50-57 and col. 6, lines 36-39). The metal for the metallized layer may be any metal or metal compound which can be deposited on the polymeric film (col. 6, lines 32-36). Thus, Miller teaches the claimed invention with the exception that the polymeric coating is an acrylic latex coating. However, as noted above, said acrylic latex coatings are well known in the art of blackout curtains. For example, DeMott teaches known blackout fabrics for curtains comprise a fabric substrate coated with a titanium dioxide pigmented latex and a carbon black pigmented latex (col. 1, lines 31-42). Similarly, Leaderman teaches known blackout drapes comprise a fabric substrate coated with one or more layers of an acrylic latex, such as an opaque carbon black acrylic coating thereon (col. 1, lines 19-42).

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Thus, it would have been obvious to one of ordinary skill in the art to substitute the polymeric coating of Miller with the known acrylic latex, in particular an acrylic which is fire retardant, in order to protect the metallized film and to enhance the light-shielding properties of the curtain. Note *In re Leshin*, 125 USPQ 416. Additionally, it would have been obvious to employ aluminum as the metal for the metallized film, since aluminum is well-known in the art as being capable of coating a film. Note *In re Leshin*. Therefore, claim 23 is rejected as being obvious over the cited prior art.

14. Claims 24 and 25 are rejected under 35 USC 103(a) as being unpatentable over the cited Miller, DeMott, and Leaderman as applied to claim 23 above, and in further view of US 4,560,245 issued to Sarver.

Miller, DeMott, and Leaderman do not teach a layer of flocked fibers on the acrylic latex layer. However, said flocking is known in the art. For example, Sarver teaches a vehicular windshield curtain comprising a light impervious sheet and a reflective outer surface (col. 2, lines 30-43). A layer of flocked fibers may be present on either the inner or outer layers of the curtain (col. 3, lines 2-10 and col. 6, lines 1-4). Thus, it would have been obvious to one skilled in the art to employ a flocked layer on the exterior of the invention disclosed by the combination of Miller, DeMott and Leaderman in order to provide an esthetically pleasing and soft surface. Therefore, claims 24 and 25 are rejected as being obvious over the cited prior art.

15. Claims 19-22, 29, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Re. 34,816 issued to Poettgen.

Poettgen discloses a lightweight reflective drape comprising an aluminum layer vacuum deposited onto a first thermoplastic film layer, a second thermoplastic layer on the opposite of

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said metal, and outer layer of nonwoven fabric (col. 5, lines 7-34). The thermoplastic film may be polypropylene (col. 5, line 35-40). The nonwoven fabric layer is preferably absorbent (col. 5, lines 53-60). In a preferred embodiment, the second thermoplastic film layer is omitted and the fabric is coupled to the aluminum layer (col. 6, lines 3-6).

Thus, Poettgen teaches the claimed invention with the exception of metallizing both sides of the film and coupling two fabric layers to the outer surfaces of the metallized film. However, it is argued that these features are obvious over Poettgen. Specifically, it would have been obvious to modify Poettgen's laminate by adding a second layer of metal and a second nonwoven layer in order to provide a two-sided reversible drape. Thus, claims 19, 22, 29, and 33 are rejected over the cited prior art.

With respect to claims 20, 21, and 32, it is argued that the claimed metal layer thickness and optical rating would have been obvious to one skilled in the art. Specifically, Poettgen teaches the metal layer to be about 300 Angstroms (0.00003 mm). However, it would have been obvious to one of ordinary skill in the art to modify the disclosed thickness of the aluminum. Motivation to do so would be to improve the heat retaining properties by increasing the thickness. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Additionally, Poettgen is silent with respect to the claimed optical rating of the aluminum layer. However, it is reasonable to presume that said rating is inherent to the invention of Poettgen since the optical rating is a property inherent to the aluminum. The burden is upon applicant to prove otherwise. Therefore, claims 20, 21, and 32 are also rejected.

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Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHERYL A. JUSKA
PRIMARY EXAMINER

cj
March 14, 2005